

REPORT TO THE TWENTY-FOURTH LEGISLATURE  
STATE OF HAWAII  
2008

DECONTAMINATION OF  
ILLEGAL METHAMPHETAMINE MANUFACTURING SITES

PURSUANT TO SECTION 3, ACT 170, 2006 SESSION LAWS  
DIRECTING THE DEPARTMENT OF HEALTH TO EVALUATE THE  
REQUIREMENTS  
FOR A STATEWIDE PROCESS TO DECONTAMINATE ILLEGAL  
METHAMPHETAMINE MANUFACTURING SITES

PREPARED BY:

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
HAZARD EVALUATION AND EMERGENCY RESPONSE

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# **DECONTAMINATION OF ILLEGAL METHAMPHETAMINE MANUFACTURING SITES EVALUATION REPORT**

## **I. Introduction**

Act 170, relating to Decontamination of Illegal Drug Manufacturing Sites, was signed into law on June 5, 2006. The Act calls for statewide guidelines and procedures to properly decontaminate and clean up methamphetamine manufacturing sites as well as the protection of the State's first responder community. The legislative Act requires that the Department of Health (DOH) establish interim rules within 90 days and permanent rules for cleaning up illegal drug manufacturing sites by the end of 2007. The Act also requires a report of the DOH's evaluation of a statewide program to decontaminate illegal methamphetamine sites together with any necessary legislation.

This report provides a description of the development of the procedures and guidelines for decontamination and cleanup of illegal methamphetamine manufacturing sites conditional on evaluation of what a statewide program needs. These guidelines and procedures apply to the cleanup of all properties that have been used to manufacture methamphetamine and its precursor hazardous materials. The department adopted guidelines and procedures, as interim rules, based on the analysis of the procedures and provisions employed by other states. This information was compiled as a collaborated effort with the Hawaii Police Department, Honolulu Police Department, Maui Police Department, Kauai Police Department, State Narcotics Enforcement Division, State Attorneys General Office, and the U.S. Drug Enforcement Agency, to provide information for the State of Hawaii.

This report also provides a description of the development of the permanent rules document. Stakeholders potentially impacted by the implementation of the rules were identified during the development process. This included various members of the small business community, real estate and property management companies, county, state, and federal law enforcement and fire department personnel. Outreach efforts were made prior to and during the public hearing and comments period. Comments were received and non-substantive changes were made to the final rules document. The document was then submitted to the Director of Health and was approved on November 16, 2007. The permanent rules are now pending approval by the Governor.

Lastly, this report also presents DOH's evaluation of the elements of a Statewide Program and the final results expected from the implementation of the permanent rules.

## **II. Development of the Interim Procedures and Guidelines**

The interim procedures and guidelines recognize and apply two broad efforts for managing the problems associated with illegal methamphetamine manufacturing sites: 1) enforcement and 2) indoor and outdoor environmental cleanup. The separation of responsibilities for the agencies managing each effort is clear; however, the interaction is very important for achieving the transition between the two efforts for the success of the cleanup effort. The general legal approach is to use current state statutes and rules to the extent feasible so the DOH Hazard

Evaluation and Emergency Response (HEER) Office may oversee and implement the guidelines and procedures listed in this report.

Beginning in 2006, the HEER Office employed several steps in order to implement Act 170. The HEER Office solicited the support from the Hawaii Police Department, Honolulu Police Department, Maui Police Department, Kauai Police Department, State Narcotics Enforcement Division, U.S. Drug Enforcement Agency, the State Attorney Generals Office, and the Hawaii Department of Health. This group of participants met in Honolulu for a half-day workshop to discuss the project and their participation. The HEER Office acquired contractor support to assist in addressing Section 3 of Act 170 and in meeting the tight 90-day schedule set by the Legislature.

HEER Office reviewed applicable materials from the State of Hawaii, Department of Public Safety, Narcotics Enforcement Division, the Missouri State Highway Patrol, the Georgia Bureau of Investigations, the Nebraska State Patrol, the Ohio Bureau of Narcotics, and the Kentucky State Police to compile the most useful information into a draft criteria document. Through the collaborative efforts of the law enforcement personnel in Hawaii, several drafts were circulated for comments. An interim document was completed by the end of the 90-day period set by the Legislature. The Director of Health adopted the document as an interim rule, as required.

The DOH interim guidelines, issued in September 2006, included procedural guidance for the following components: 1) Enforcement activities are handled by local and/or federal law enforcement agencies conducting the criminal investigation; 2) Enforcement agencies provide a brief report to the HEER Office on the description of the operation of the illegal laboratory and the general lay-of-the-land to complete the transition process between the enforcement and the environmental cleanup process; 3) The HEER Office notifies the property owner and initiates the clean-up process. The property owner alone has the responsibility for the cleanup and should hire a qualified environmental consultant to assist in the cleanup. The HEER Office provides oversight of the cleanup of the illegal laboratory under its Chapter 128D, Hawaii Revised Statutes (HRS) authority. When the property meets the acceptable cleanup requirements of HRS 128D, it will be declared to be clean and a 'no further action' (NFA) letter will be issued to the property owner.

### **III. Development of the Permanent Rules**

The draft permanent rules were developed by the DOH. The draft permanent rules document was submitted to the Governor for approval to go to public notice and hearing on July 15, 2007. Upon approval, public hearing notices were published in the Honolulu Star-Bulletin, Maui News, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today newspapers on August 15-17, 2007. A Public Hearing was held in Oahu on September 12, 2007, and in Maui, Kauai, and Hawaii (Hilo) via videoconferencing. Comments were received and reviewed and non-substantive changes were made to the draft rules. The Deputy Attorney General assigned to review these rules also determined that no substantial changes were made to the proposed rules.

During the permanent rule making process, DOH noted that the proposed rules would have an impact on small businesses. As such, the Department has previously prepared a Small Business

Impact Statement. The document was submitted to, and reviewed by, the Small Business Regulatory Review Board prior to the Department holding its public hearings. DOH also prepared a Post-Hearing Small Business Impact Statement. The Small Business Regulatory Review Board reviewed this Post-Hearing Statement and gave the Department their approval to finalize the permanent rules on October 2007. The rules document was then sent to the Director of Health and was approved on November 16, 2007. The document is currently pending approval by the Governor.

#### **IV. Evaluation of the Elements of a Statewide Program**

An evaluation of the elements of a Statewide Program was completed throughout this process. The following list of the elements and a description summary of the corresponding results for each is provided below:

- 1) An assessment of soil and groundwater impacts  
*The permanent rules incorporate the standard methods already in place for the assessment of soil and groundwater contamination. These methods reflect the most currently accepted industry standards and are also in concurrence with the 11-451, HRS, State Contingency Plan;*
- 2) A review of cleanup procedures at actual locations in Hawaii  
*The interim guidelines were used to provide oversight for the cleanup of a designated methamphetamine manufacturing site located on the island of Maui. The cleanup process was successfully completed, and the site received a No Further Action (NFA) determination by the DOH;*
- 3) Recommend protocols for the first responder community  
*Reviews of other state protocols and procedures verified that federal and state safety requirements are already in place. Input and comments from the first responder community was also requested during the final rule making process;*
- 4) A review of DOH and Hawaii law enforcement records  
*A comprehensive file review of past methamphetamine manufacturing sites reported to the DOH was conducted. Several meetings were also held with the law enforcement community to discuss the manner in which these sites were handled in the past and how these properties would be addressed under the jurisdiction of the permanent rules;*
- 5) A review of standards and protocols used by other states  
*A comprehensive study was conducted of the standards and protocols used by other states to address the cleanup of methamphetamine manufacturing sites. The results of the study have been incorporated into the guidelines and procedures and the final rules;*
- 6) Additional legislation  
*Additional legislation may be needed in the future if the current caseload were to increase. Presently, there is no designated funding source for this program. Refer to the "Final Results" section for further explanation.*

### **VI. Final Results (to be expected by adoption of the proposed rules)**

Adoption of the proposed rules will grant the Department authority to determine acceptable levels of methamphetamine manufacturing site decontamination and cleanup based on widely accepted industry standards. This rule would establish minimum personnel health and safety requirements that must be met prior to Department authorization of decontamination procedures proposed by retained cleanup contractors and the first responder community. Adoption of this rule would establish minimum sampling and cleanup requirements for outdoor environmental site contamination stemming from methamphetamine manufacture and storage.

The rule provides affected site owners and managers an administrative avenue to attain a determination of no further action from the Department declaring a previously hazardous property safe for reoccupation and reuse. This rule is exclusive to sites contaminated by methamphetamine manufacture and storage, providing eligible parties a practicable remedial action alternative to the general remedial actions currently available under existing Hawaii contaminated property remediation laws.

Unless determined to pose a threat to the public health and welfare or the health of the environment, the Department is not required under this rule to financially assist the remediation of privately owned properties contaminated by methamphetamine manufacturing activities. All costs associated with the cleanup and decontamination of a methamphetamine manufacturing site are the responsibility of the property owner. Private party remedial actions under this rule do require some level of Department oversight and guidance. To adequately protect the health and safety of the public, the environment, and first responder community, Department costs may be incurred during private remedial actions, or during remedial actions for which there is no solvent responsible party. Adoption of this rule would place additional oversight and participation duties upon the Department during methamphetamine manufacturing site remediation efforts undertaken by the Department and/or private parties. Currently, resources for this additional workload are drawn from existing Department and HEER Office means.

The Department will be evaluating the short-term impact of this potential resource redistribution. The uncertain demand on Department resources upon adoption of this rule, based on unknown site eligibility, prerequisite law enforcement activities, and property owner participation, compounds the difficulty of predicting long-term State impacts.

Under the State Environmental Response Law, there is established a State “Environmental Response Revolving Fund”(the “Fund”) designed to support Department environmental response actions and preparedness, including removal and remedial actions. Neither the proposed rule, nor the Hawaii Environmental Response Law, expressly provide for the use of the Fund to reimburse Department costs for the remediation illegal methamphetamine manufacturing sites.

In a methamphetamine manufacturing site decontamination action on Maui mentioned above and conducted earlier this year (2007), the HEER Office contributed over 100 man-hours in oversight, technical guidance, and record keeping. In addition to the man-hours, approximately

\$7,000 was allocated from the Fund to pay for a portion of the cleanup effort, none reimbursed by the responsible property owner. Future proposed legislation could provide a mechanism for recovering Departmental costs expended in the remediation of privately owned properties contaminated through methamphetamine manufacturing activities.

This rule is the first of its kind in Hawaii developed to provide guidelines for the remediation of properties contaminated by the manufacture of a controlled substance and the storage of its precursor hazardous materials. The prospective implementation of this rule into the existing Hawaii Environmental Response Law and/or State Contingency Plan would provide for civil penalties and citizen suits attached to property contamination and subsequent remediation.

While there are federal statutory avenues for reimbursement of methamphetamine manufacturing site remedial actions initiated by state agencies, such avenues may not be available for Department access or eligibility on a basis consistent to satisfy Department financial needs. Department compensation through subsequent civil action is also a viable, yet uncertain, avenue for recovery of Department costs.